

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

I, ULI KUEHBACHER, hereby declare as follows:

1. I am Executive Vice President of Deutsche Telekom AG (“Deutsche Telekom”) and, until December 2006, I was General Counsel for T-Mobile International AG. I am also a member of the Supervisory Board of Polska Telefonia Cyfrowa Sp. z o.o. (“PTC”). I submit this declaration in support of the Motion of Deutsche Telekom, T-Mobile Deutschland GmbH, T-Mobile International AG, and T-Mobile USA, Inc. (the “DT Defendants”) to Dismiss the Third Amended Complaint. This declaration is based on my personal knowledge or on information that I have obtained for the purpose of preparing this declaration.

1       2. I am familiar with the organizational structure and business activities of  
2 Deutsche Telekom and its subsidiaries—including the DT Defendants—and have knowledge  
3 of the dispute surrounding ownership of certain shares in the Polish telecommunications  
4 company, PTC, that is the basis of this lawsuit. I am also familiar with the allegations that  
5 Vivendi S.A. (“Vivendi”) and Vivendi Holding I Corp. (“Vivendi Holding”) (collectively,  
6 “Plaintiffs”) make in their Third Amended Complaint.  
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8 **I. THE DT DEFENDANTS’ ORGANIZATIONAL STRUCTURE**

9       3. Deutsche Telekom, T-Mobile International AG, and T-Mobile Deutschland  
10 GmbH (the “German DT Defendants”) are all organized under the laws of Germany with their  
11 principal places of business in Germany. The German DT Defendants are all separate  
12 corporate entities that maintain separate books and records.

13       4. Deutsche Telekom is the parent company of a group of corporate entities,  
14 including the other DT Defendants. Deutsche Telekom owns subsidiaries that provide fixed-  
15 line and mobile telecommunications services.

17       5. T-Mobile International AG is the general partner of T-Mobile International AG  
18 & Co. KG, which is a holding company for the subsidiaries of Deutsche Telekom that provide  
19 mobile telecommunications services. T-Mobile International AG is wholly owned by T-  
20 Mobile International Holding GmbH. T-Mobile International Holding GmbH is a holding  
21 company that is in turn wholly owned by Deutsche Telekom and that is organized under the  
22 laws of Germany with its principal place of business in Germany.  
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24       6. T-Mobile International Holding GmbH owns all but one share of T-Mobile  
25 International AG & Co. KG, which is also organized under the laws of Germany with its  
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1 principal place of business in Germany. T-Mobile International AG owns one share of T-  
2 Mobile International AG & Co. KG.

3 7. T-Mobile International AG & Co. KG wholly owns T-Mobile Deutschland  
4 GmbH, which was previously known as DeTe Mobil Deutsche Telekom Mobilnet GmbH. T-  
5 Mobile International AG & Co. KG also wholly owns T-Mobile Global Holding GmbH,  
6 which is organized under the laws of Germany with its principal place of business in  
7 Germany.

8 8. T-Mobile Global Holding GmbH wholly owns T-Mobile USA.

9 9. T-Mobile Deutschland GmbH provides mobile telecommunications services in  
10 Germany. T-Mobile Deutschland GmbH and T-Mobile USA are affiliates and do not have a  
11 parent-subsidiary relationship.

12 10. T-Mobile USA does not hold any stock or other interest in PTC.

13 **II. GERMAN DT DEFENDANTS' CONTACTS WITH WASHINGTON STATE  
14 AND THE UNITED STATES**

15 11. To my knowledge, none of the German DT Defendants is incorporated or  
16 registered to do business in the State of Washington, or any other U.S. State.

17 12. To my knowledge, none of the German DT Defendants owns or rents any  
18 property in the State of Washington, or any other U.S. state.

19 13. To my knowledge, the German DT Defendants do not sell their  
20 telecommunications products or services in the State of Washington, or any U.S. State.

21 14. To my knowledge, the German DT Defendants do not advertise their  
22 telecommunications products or services in the State of Washington, or any U.S. State.  
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**III. THE GERMAN DT DEFENDANTS' RELATIONSHIP WITH T-MOBILE USA**

15. Like each of the German DT Defendants, T-Mobile USA is a separate  
corporate entity. To my knowledge, T-Mobile USA and the German DT Defendants do not  
hold joint boards of directors' meetings, and they file separate tax returns.

16. While certain members of the German DT Defendants' boards of directors  
(called "supervisory boards") sit on T-Mobile USA's board, they do so as T-Mobile USA  
directors and not as representatives of the German DT Defendants.

17. T-Mobile USA operates a separate wireless telecommunications network from  
that of the German DT Defendants. The wireless devices sold by the German DT Defendants  
and T-Mobile USA operate using a Global System of Mobile Communications ("GSM")  
technology platform. European and U.S. GSM frequencies are different, however, and thus  
the GSM networks on which the German DT Defendants' and T-Mobile USA's products and  
services operate are separate and distinct.

**IV. LITIGATION CONCERNING THE DISPUTED PTC SHARES**

18. Over the last eight years, Vivendi, Elektrim S.A. ("Elektrim"), Telco (a joint  
venture between Vivendi and Elektrim), and Deutsche Telekom (and certain of its German  
subsidiaries) have been involved in numerous arbitral and national court proceedings in  
Europe concerning the ownership of certain shares in PTC originally held by Elektrim. These  
proceedings have taken place in Poland, Austria, France, Germany, the United Kingdom, and  
Switzerland. T-Mobile USA has not been a party to any of these proceedings. Many of these  
proceedings are still ongoing.

19. As described in paragraph 60 of the Third Amended Complaint, on November  
26, 2004, an arbitral tribunal in Vienna, Austria issued an award finding, among other things,

1 that the attempted transfer by Elektrim of its shares in PTC to Telco was ineffective and that  
2 Elektrim remained the owner of the disputed shares at all material times ("the November 2004  
3 Award").

4       **A. Proceedings in Poland**

5       20. On or about December 16, 2004, Elektrim filed an action in Poland seeking  
6 recognition of the November 2004 Award. On February 2, 2005, the Warsaw Regional Court  
7 issued a decision recognizing the November 2004 Award. An English translation of that  
8 decision is attached hereto as Exhibit A.

9       21. Telco appealed the Warsaw Regional Court's decision to the Appellate Court  
10 in Warsaw, 1st Civil Division. On March 29, 2006, the Appellate Court dismissed the appeal.  
11 An English translation of the Appellate Court's decision is attached hereto as Exhibit B.

12       22. Telco appealed the court of appeals's decision to the Supreme Court of Poland.  
13 On January 18, 2007, the Polish Supreme Court vacated the lower-court decisions confirming  
14 the November 2004 Award on procedural grounds. The Supreme Court remanded the case to  
15 the Warsaw Regional Court where the recognition proceedings have now recommenced. An  
16 English translation of the Supreme Court decision is attached as Exhibit C.

17       23. In addition to the recognition proceedings related to the November 2004  
18 Award, Vivendi and Telco have also filed more than a dozen legal proceedings in Poland  
19 relating to the PTC dispute. Some, but not all, of the actions that Vivendi and Telco have  
20 filed in Poland are described below.

21           a. Following the November 2004 Award, Telco filed suit in Warsaw  
22 Regional Court seeking a declaration that it was the owner of the PTC shares. During  
23 those proceedings, Telco made an *ex parte* application requesting that PTC be

1 enjoined from making any changes to PTC's internal share register. An English  
2 translation of Telco's Request for Interim Measures in that action is attached hereto as  
3 Exhibit D.

4 b. On June 20, 2006, after the Warsaw Regional Court issued the *ex parte*  
5 injunction, the Warsaw Appellate Court reversed, holding that the November 2004  
6 Award barred Telco's claim to the shares. An English translation of the Appellate  
7 Court's decision is attached hereto as Exhibit E. Telco continues to seek a declaration  
8 from the Polish courts that it is the owner of the PTC shares.

9 c. Vivendi (or Telco) has also initiated many additional proceedings in  
10 Poland, including, but not limited to, proceedings: to declare invalid T-Mobile  
11 Deutschland GmbH's acquisition of the PTC shares; to list Telco as the owner of the  
12 disputed PTC shares in the National Court Register, the official Polish registry of  
13 shareholders; to prohibit PTC from distributing profits; to prohibit Elektrim's  
14 representatives on the PTC Management and Supervisory Boards from acting on  
15 behalf of PTC; to prohibit T-Mobile Deutschland GmbH and Elektrim from exercising  
16 shareholder rights with regard to the disputed PTC shares; to restrain Elektrim from  
17 transferring or taking any action with regard to the disputed shares; to order Elektrim  
18 to return the PTC shares or their value to Telco; for damages against PTC Supervisory  
19 Board and Management Board members and PTC shareholders; and to prohibit  
20 Elektrim from transferring funds to its creditors.  
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23 **B. Proceedings in Austria**

24 24. Vivendi, through Telco, sought to annul the November 2004 Award in Austria.  
25 On December 20, 2005, the Commercial Court in Vienna partially annulled the November  
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1 2004 Award. On October 10, 2006, the Higher Regional Court of Vienna reversed the  
2 Commercial Court's partial annulment and dismissed Telco's action. Telco was ordered to  
3 pay the costs and attorney's fees of the other parties to the appeal proceedings, including T-  
4 Mobile Deutschland GmbH. An English translation of this decision is attached hereto as  
5 Exhibit F.

6 25. On December 18, 2006, the Austrian Supreme Court issued a decision  
7 affirming the appellate court's dismissal of the annulment action and order for Telco to pay  
8 costs and attorney's fees. An English translation of the Supreme Court's decision is attached  
9 hereto as Exhibit G.

11 **C. Proceedings in France**

12 26. On or about April 26, 2005, Vivendi served Deutsche Telekom and T-Mobile  
13 International AG & Co. KG with a civil summons to appear before the Commercial Court of  
14 Paris. An English translation of the Summons is attached hereto as Exhibit H.

15 27. Vivendi alleges that the defendants violated French law by breaking off  
16 settlement talks in 2003 and 2004 in bad faith and colluding with Elektrim. Among other  
17 things, Vivendi seeks damages in the amount of its alleged investment in PTC (1,881,601,161  
18 euros). An English translation of Vivendi's brief submitted to the French court is attached  
19 hereto as Exhibit I.

21 **D. Proceedings in Germany**

22 28. Vivendi filed suit in Hamburg, Germany, requesting that the court prohibit  
23 Deutsche Telekom from making any statements to the effect that it owns the PTC shares. The  
24 Hamburg Regional Court rejected Vivendi's claim in a decision dated November 7, 2006. An  
25 English translation of that decision is attached hereto as Exhibit J.

1           **E. Proceedings in Switzerland**

2       29. In April 2006, Vivendi commenced another arbitration, this time before the  
3 International Court of Arbitration of the International Chamber of Commerce in a proceeding  
4 sited in Geneva, Switzerland. The respondents in that arbitration are, among others, Deutsche  
5 Telekom, T-Mobile International AG & Co. KG, T-Mobile Deutschland GmbH, Elektrim,  
6 and PTC. In the Swiss arbitration, Vivendi claims to be the owner of the disputed PTC shares  
7 based on a purported oral agreement. Vivendi seeks specific performance of that agreement  
8 and/or damages. Again, Vivendi claims that it is entitled to regain the disputed PTC shares or  
9 its lost investment.

10           **V. LOCATION OF RELEVANT DOCUMENTS AND WITNESSES**

11       30. To my knowledge, the DT Defendants' documents and witnesses relevant to  
12 this lawsuit, which I understand accuses the DT Defendants of violating U.S. law during and  
13 after the Second and Third Vienna Arbitrations (as defined in Plaintiffs' complaint), are  
14 located outside the United States.

15       31. To my knowledge, all of the documents possessed by any DT Defendant that  
16 are relevant to discussions with Vivendi to settle the PTC dispute are located in Germany and  
17 Poland. To my knowledge, no such documents would be located in the United States because  
18 T-Mobile USA had no involvement in the settlement discussions that form the basis of this  
19 lawsuit.

20       32. To my knowledge, all of the documents possessed by any DT Defendant that  
21 are relevant to the Second and Third Vienna Arbitrations are located in Germany and Poland.  
22 To my knowledge, no such documents would be located in the United States because T-

1 Mobile USA had no involvement in the Second or Third Vienna Arbitrations or any of the  
2 legal proceedings regarding ownership of the PTC shares.

3       33. To my knowledge, all of the documents possessed by any DT Defendant that  
4 would concern Elektrim or Mr. Solorz Zak, if they existed, would be located in Germany and  
5 Poland. To my knowledge, no such documents would be located in the United States because  
6 T-Mobile USA had no involvement in the PTC dispute.  
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8       34. To my knowledge, all of the documents possessed by any DT Defendant  
9 regarding the three press releases that Plaintiffs allege in this lawsuit were misleading would  
10 be in Germany, where the press releases were drafted and released.

11       35. To my knowledge, all of the witnesses likely to have knowledge of any  
12 settlement communications with Vivendi, the Second and Third Vienna Arbitrations,  
13 communications with Elektrim or Solorz, and the press releases identified by Plaintiffs in  
14 their complaint would be located in Germany, Poland, or elsewhere in Europe, but not in the  
15 United States.  
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17       36. If this case were to be tried before this Court, the DT Defendants' witnesses  
18 would need to travel to Seattle from Germany, Poland and elsewhere in Europe.

19       37. I understand that Plaintiffs base their complaint in part on communications  
20 allegedly made by Mr. Peter Golob to representatives of Vivendi. Mr. Golob was never, and  
21 is not now, an employee of any of the DT Defendants, though he has acted as an independent  
22 consultant in the past. To my knowledge, he currently resides in London, England.  
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24       38. I understand that Plaintiffs also base their complaint in part on a  
25 communication allegedly made by Mr. Thomas Winkler, former CFO of T-Mobile  
26 International AG, to representatives of Vivendi. As of January 31, 2007, Mr. Winkler is no  
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1 longer the CFO of T-Mobile International AG. To my knowledge, he currently resides in  
2 London, England.

3       39. I understand that Plaintiffs also base their complaint in part on a  
4 communication allegedly made by Mr. Kai-Uwe Ricke, the former CEO of Deutsche  
5 Telekom, to Mr. Jean-Bernard Levy, the CEO of Vivendi. Mr. Ricke is no longer an officer  
6 or employee of Deutsche Telekom. To my knowledge, he currently resides in Bonn,  
7 Germany.

8       I declare under penalty of perjury under the laws of the United States that the  
9 foregoing is true and correct.

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12      13 EXECUTED this 25<sup>th</sup> day of September, 2007.  
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Uli Kuehbacher

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2007, I filed this Declaration of Uli Kuehbacher in Support of Motion to Dismiss the Second Amended Complaint on the CM/ECF system, which will send notification of such filing to the following persons:

Robert E. Rohde: brohde@rohdelaw.com

Lanny J. Davis: ldavis@orrick.com

Garrett Rasmussen: grasmussen@orrick.com

DATED this 26th day of September, 2007.

Davis Wright Tremaine LLP  
Attorneys for Defendants

By: /s/ Steven P. Caplow  
Steven P. Caplow, WSBA #19843  
Davis Wright Tremaine LLP  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688  
Telephone: (206) 628-7513  
Fax: (206) 628-7699  
E-mail: stevencaplow@dwt.com